

ISSUE DATE: March 11, 1998

DOCKET NO. P-421/EM-97-1739

ORDER APPROVING PLAN AND REQUIRING AMENDED TARIFF

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Introduction of Better
Dealsm Optional Calling Plan as a Market Trial
in Minnesota

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PROCEDURAL HISTORY

On September 2, 1997, U S WEST Communications, Inc. (USWC) submitted a proposal to introduce the Better Dealsm Optional Calling Plan through a Market Trial in Minnesota in Docket No. P-421/EM-97-1325.

On October 29, 1997, the Commission issued an Order in Docket No. P-421/EM-97-1325 stating that the Better Dealsm Optional Calling Plan is "deemed withdrawn." Order at page 3. In addition, the Commission stated that:

[i]f USWC wishes to seek to implement a new Better Dealsm Optional Calling Plan, as verbally altered in the proceeding to date or otherwise, it shall commit such plan to writing and file it with the Commission, together with proposed tariffs for the plan and such cost information and other supporting materials as are required by law or deemed appropriate by the Commission.

Order at page 4.

On December 5, 1997, USWC submitted its current proposal to introduce the "Better Dealsm Optional Calling Plan" through a market trial for residential customers with a proposed effective date of January 5, 1998 and ending date of October 4, 1998 (or nine months from the effective date if not approved by the Commission for implementation on the proposed implementation date. This matter was assigned to Docket No. P-421/EM-97-1739.

On December 11, 1997, the Minnesota Department of Public Service (the Department) filed comments recommending disapproval on the grounds that USWC's proposed "market trial" plan does not fall within the scope of USWC's market trial tariff.

USWC did not reply to the Department's comments. No other parties filed comments on this proposal or the Department's comments.

The Commission met to consider this matter on February 24, 1998.

FINDINGS AND CONCLUSIONS

I. USWC'S RESUBMITTED BETTER DEAL PLAN

USWC's current proposal to introduce the Better Dealsm Optional Calling Plan for residential customers through a nine-month market trial. The main elements of the Better Dealsm Optional Calling Plan are:

- USWC's Residential Customers: for unlimited toll usage on intraLATA dial station-to-station calls, residential customers would pay monthly rates of \$49.00. Customers must have lines at single customer premises and billed to one telephone number. A subscriber must be an existing customer with established retail service for a minimum of six months. A customer's actual retail intrastate toll use during two most recent full billing months must not have exceeded \$200.00. Customers must enroll in the trial promotion within 60 days of the effective date of the tariff.
- Resale Customers: Resale customers (resellers) must subscribe to one plan for each residential end user billing telephone number utilizing the plan. The resellers' end users must have single or multiple residential line(s) at a single customer premises. Sharing one plan for multiple customers is not permitted.

The primary restrictions applying to the plan are: 1) resale customers must subscribe to one plan for each residential end user billing telephone number utilizing the plan; 2) end users must have single or multiple residential line(s) at a single customer premises; 3) sharing one plan for multiple customers is not permitted. Additional restrictions apply, as described in USWC's proposed Better Deal tariff.

II. THE DEPARTMENT'S COMMENTS

The Department recommended that the Commission disapprove USWC's proposal to introduce the Better Dealsm Optional Calling Plan as a market trial.

A. Clarifications

The Department acknowledged that under the Company's current proposal Better Dealsm Optional Calling Plan addressed certain concerns raised in Docket No. P-421/EM-97-1325 by the Department regarding the initial Better Deal proposal. The Department noted that the current Better Deal plan will be made available to end users **and** resellers of intraLATA toll service and resellers will not be subject to several restrictions that USWC is placing on its own customers. However, the Department noted that several restrictions continue to apply to resellers offering the Better Dealsm Optional Calling Plan to their customers: resellers cannot purchase one plan for themselves and then resell the usage under that one plan to all of its customers. Each end user must have their own plan. Also, only residential customers, with single or multiple lines at a single premise, will be able to subscribe to the Better Dealsm Optional Calling Plan.

In addition, the Department reviewed cost data supplied by USWC and reported that the data showed that the service is priced above cost during the trial period.

B. Objections

The Department objected that the Better Dealsm Optional Calling Plan does not fall within the scope of USWC's market trial tariff because the trial offering relates to a basic service and is not an "optional feature or functionality" as that category appears in the Company's current tariff.¹ Instead, the Department argued, the Company's proposal must be viewed as a promotion subject to the requirements of Minn. Stat. § 237.626. Under the requirements of that statute, the Department argued that the Company's proposal must be rejected because it extends beyond the 90 day time period set in the statute for promotions. The Department recommended that the Commission disapprove the USWC's plan unless the Company amended it plan to limit the service to a 90 day period (as required of a promotion) or made the service a permanent offering.

At the hearing on this matter, the Department suggested a third alternative, that the Commission require USWC to amend its tariff to specifically provide for trial marketing of optional pricing plans for 1+ intraLATA toll service such as the Better Deal Plan. The Department stated that Commission approval of the Plan under USWC's current tariff language would essentially find that the service offered under the Plan (1+ intraLATA service) is an "optional feature or functionality." The Department expressed the concern that such a finding would contradict and could potentially undermine the Commission's position (recently adopted in the rules regarding local competition for large companies) that 1+ intraLATA toll service is a basic service that all local service providers must provide. See Minn. Rules, Part 7812.0600, Subp. 1.

USWC responded that the Better Deal Plan is authorized under its current trial market tariff because the Better Deal offering is "optional" in the sense that no customer is required to subscribe to it, no customer is required to subscribe to toll service, and customers desiring toll service don't have to take it from USWC but can choose to have their toll calls carried by any number of interexchange carriers (IXCs).

III. COMMISSION ANALYSIS AND ACTION

On October 29, 1997, the Commission issued an Order in Docket No. P-421/EM-97-1325 stating that the Better Dealsm Optional Calling Plan is "deemed withdrawn." Order at page 3. The Commission stated further:

If USWC wishes to seek to implement a new Better Dealsm Optional Calling Plan, as verbally altered in the proceeding to date or otherwise, it shall commit such plan to writing and file it with the Commission, together with proposed tariffs for the plan and such cost information and other supporting materials as are required by law or deemed appropriate by the Commission.

Order at page 4.

¹ USWC's trial market tariff was approved by the Commission in its November 12, 1996 ORDER APPROVING FILING WITH CLARIFICATIONS in Docket No. P-421/EM-96-766.

The Commission has reviewed USWC's revised Better Deal filing and finds that it appropriately addresses the concerns expressed in its October 29, 1997 Order (Docket No. P-421/EM-97-1325) regarding the originally filed Better Deal. Cost data filed by USWC in support of the refiled Better Deal show that the service is priced above cost during the trial period. In addition, inappropriate resale restrictions imposed as part of the initial Better Deal have been removed.

Analysis of the Department's Recommendations

The Department argued that USWC's proposed Better Deal "market trial" was not the kind of offering authorized under the Company's market trial tariff. Therefore, the Department initially recommended, the Commission should disapprove the Plan unless the Company was required to confine the offering to a 90 day period as a promotion (Minn. Stat. § 237.626) or make the service a permanent offering.

The Commission generally encourages the kind of marketplace experimentation that USWC's plan represents and is, therefore, not inclined to accept the Department's recommendations that the Company be required to radically alter the duration of its plan (as indicated by the Department) if there is an appropriate way to permit this experimental activity. Therefore, the Commission viewed with appreciation the Department's subsequent suggestion that approval of the Plan as proposed could be approved as filed provided the Company's tariff was amended to authorize such a Plan.

The Commission's evaluation of the need to amend USWC's trial market tariff, as recommended by the Department, follows:

The Commission agrees with the Department that the service offered under Better Deal is 1+ intraLATA toll service and that the Commission has declared this a "basic" service that every local service provider is required to provide, as part of its local service offering, to all customers within its service area. See Minn. Rules, Part 77812.0600, subp. 1 (C). As such, the service offered under Better Deal (1+ intraLATA toll service) is clearly not an optional service for local service providers. All local service providers must provide access to this service for all customers within their relevant service areas.

The Commission also recognizes, however, that Better Deal is a **pricing plan** (optional to the customer) **for a basic service** and is not the service in itself. In addition, USWC has simply argued that Better Deal is "optional" from the point of view of the customer, not that it is optional for the provider. Consequently, the Commission does not agree with the Department that approval of Better Deal under the "optional feature or functionality" category of USWC's tariff would necessarily imply that the Commission viewed the underlying service (1+ intraLATA toll service) as an optional service, i.e. that it was not a "basic" service and that local service providers had no obligation under the rules to provide it. Further, the Commission never contradicts or waives the requirement of a rule without specifically finding (pursuant to Minn. Rules, Part 7829.3200) that variance is warranted. In these circumstances, an intent to contradict its own rule could not be properly attributed to the Commission from a decision to approve Better Deal under the "optional feature or functionality" category.

The Commission does agree with the Department, however, that Better Deal does not fit squarely into the “optional feature or functionality” category in USWC’s current market trial tariff. As a consequence, the Commission will direct USWC to file, within 10 days of the Commission's Order, an amended market trial tariff that includes a specific reference to intraLATA pricing plans as a new category for which a market trial may be authorized.

ORDER

1. USWC’s Better Dealsm Optional Calling Plan is approved as filed, effective as of the date of this Order.
2. Within 10 days of this Order, USWC shall file an amended market trial tariff that includes a specific reference to intraLATA pricing plans as a new category for which a market trial may be authorized.
3. The market trial tariff, amended as provided in this Order, shall become effective as of the date of this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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